

Office of Personnel Management

FPM Letter 751-

Federal Personnel Manual System

FPM Letter 751-

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RETAIN UNTIL SUPERSEDED

SUBJECT: Tables of Suggested Actions for
Correcting Employee Misconduct

Washington, D. C. 20415

Hheads of Departments and Independent Establishments:

1. This FPM letter states the policy of the Office of Personnel Management on agencies publishing tables of suggested actions for correcting employee misconduct. It includes a sample table (see attachment) which may be used by agencies for guidance in developing or modifying a table of suggested actions. However, it should be noted that the sample table is offered only as guidance by example. It is not meant to be construed by agencies or third parties as a Government-wide table, or as reflecting a judgment by OPM on what offenses should or should not be included on a table for a particular occupation or agency or what range of penalties should be used for a listed offense.

2. A published table of suggested actions offers several important benefits. Such a table transmits a clear message that misconduct has adverse consequences, and that those consequences are both certain and foreseeable. It benefits employees by informing them of their agency's standards and expectations regarding conduct. It also promotes uniformity in imposing discipline, ensuring that treatment of like offenses is reasonably consistent. Equally important, such a table can be instrumental in aiding supervisors in overcoming the natural human reluctance to confront the unpleasant circumstances inherent in disciplining employees and thereby helps ensure that actionable offenses are met with some standard minimum corrective action. Thus, unwanted behavior is more apt to receive the early attention that prevents minor offenses from growing into major conduct problems. Also, a table of suggested actions helps to ensure that an employee is not protected against action simply because he or she occupies a high level position within the agency. In addition to providing this supportive environment for good supervision and management, such a table assists agency internal auditors and OPM personnel management evaluators in reviewing the effectiveness of the agency's disciplinary program.

3. For these reasons, OPM strongly encourages each agency to publish a table or tables of suggested actions as a guide for correcting employee misconduct. An agency which does not have a published table may adopt or modify for its own use the sample table attached to this letter, or may wish to develop a table that takes into account the particularities of the agency. Departments or other large organizations may wish to establish separate tables for their components if differences in mission or operating environment so warrant.

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Attachment

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Attachment to FPM Letter 751- (1)

Preface to the
Guide for Correcting Employee Misconduct

The table of penalties provided below is being included with this FPM Letter only for the purpose of giving guidance by example to agencies developing or modifying their own tables. The Office of Personnel Management recognizes the possibility of variation from the table in the assessment of penalties for particular offenses depending on such factors as grade level and type of position occupied by the offending employee. Such variations are appropriate and to be expected. For example, while an oral admonishment might be appropriate discipline for a lower level employee committing a first offense of falsifying a travel voucher, a penalty up to and including removal would be more appropriate for an employee occupying a position with significant fiscal responsibility such as auditor or IRS agent. For that reason, this table is not offered as a Government-wide table of penalties nor should agencies or third party adjudicators interpret the table as representing OPM's judgment concerning actionable offenses or the range of appropriate penalties for listed offenses.

In establishing or modifying a table of penalties, agencies are reminded to be aware of their rights and obligations under the Federal Labor-Management Relations Statute, 5 U.S.C. Chapter 71.

As further guidance, OPM suggests that an agency consider including as part of its table of penalties a narrative section covering the following areas:

1. The agency's issuance should state that its table is meant as a guide to disciplining employees and that a penalty greater or lesser than one listed in the table may be appropriate. That is, the use of a particular penalty should not be necessarily mandatory because it is listed in an agency's table. This does not mean, however, that deviations from the table should be frequent. A carefully crafted table will establish the correct penalty in most cases. Equally important, the table should make clear that, even for offenses where removal is not listed for a first offense, removal on a first infraction nevertheless may be assessed for an aggravated offense. As discussed under item 3 below, selecting a proper penalty requires balancing the mitigating and aggravating factors in the particular case. It should be noted that penalties for certain offenses are prescribed in statute. [For example, see 31 U.S.C. 638a(c)(2) concerning misuse of Government vehicles]. It is suggested that the table indicate which penalties are mandatory.
2. The agency's issuance should also state that its table is not meant to be an exhaustive listing of all offenses.
3. The agency's table should include a discussion of the general categories of mitigating and aggravating factors to be considered when selecting a penalty. For guidance in this area, the agency should refer to the decision of the Merit Systems Protection Board in Curtis Douglas, et. al. v. Veterans Administration, MSPB Docket No. SF075299024, April 10, 1981, pages 32-33 (Slip Opinion).
4. An agency's table should include information on the period of time over which offenses are cumulative for purposes of assessing progressively stronger penalties. This period is often referred to as the "reckoning period" and may vary for different offenses. For example, in assessing a penalty for current tardiness an agency may not wish to count tardiness that occurred long ago. However, for offenses reflecting character traits such as dishonesty, an agency may wish to specify a lengthy or indefinite reckoning period. Information concerning reckoning periods may be included in a narrative section preceding the table, or a separate column may be added to the table indicating the reckoning period for each listed offense.

Attachment to FPM Letter 751- (2)

5. In conjunction with the discussion on reckoning periods, mentioned in item 4 above, the agency may wish to include a provision that a specified number of infractions, even for unrelated offenses, over a given period may trigger consideration of removal whether or not removal is listed for any of the offenses individually.

6. In addition to the above, the agency may wish to include a statement that oral admonishments can not be considered disciplinary actions for purposes of citing the past disciplinary record, but that such admonishments may be considered under the Douglas factors when assessing a penalty. [See item 3, above.] Also, agencies may wish to include explanations covering whether days listed are calendar days or work days, whether the table applies to probationers, and whether the term "reprimand" means a written reprimand.

GUIDE TO CORRECTING MISCONDUCT
TABLE OF SUGGESTED ACTIONS

THIS MATERIAL FOR INSTRUCTIONAL PURPOSES ONLY
PLEASE REFER TO THE PREFACING REMARKS ABOVE

Nature of offense	1st offense	2nd offense	3rd offense
1. Attendance-related offenses			
a. Unexcused Tardiness This includes delay in reporting at the scheduled starting time, returning from lunch or break periods, and returning after leaving work station on official business. Penalty depends on length and frequency of tardiness. 4th offense typically may warrant 5-day suspension to removal.	Oral admonishment	Oral admonishment to 1-day suspension	Oral admonishment to 5-day suspension
b. Absence without leave (AWOL) These penalties generally do not apply to AWOL charged for tardiness of 1/2 hour or less. (See 1a above.) This offense includes leaving the work station without permission. Penalty depends on length and frequency of absences. Removal may be appropriate for a 1st or 2nd offense if the absence is prolonged.	Reprimand to 5-day suspension	1-day to 14-day suspension	5-day suspension to removal
	FOR INSTRUCTIONAL USE ONLY		
c. Failure to follow established leave procedures.	Reprimand to 5-day suspension	1-day to 5-day suspension	5-day suspension to removal

Attachment to FPM Letter 751- (3)

Nature of offense	1st offense	2nd offense	3rd offense
2. Breach of safety regulation or practice			
a. Where imminent danger to persons or property is not involved.	Reprimand to 1-day suspension	1-day to 14-day suspension	5-day suspension to removal
b. Where imminent danger to persons or property is involved. "Persons" includes "self". Penalty depends on seriousness of injury or potential injury and extent or potential extent of damages to property. Safety regulations may include requirements to report accident or injury	Reprimand to removal	30-day suspension to removal	Removal
3. Breach of security regulation or practice			
a. Where restricted information is not compromised and breach is unintentional	Reprimand to 5-day suspension	1-day to 14-day suspension	5-day suspension to removal
b. Where restricted information is compromised and breach is unintentional	Reprimand to removal	30-day suspension to removal	Removal
c. Deliberate violation	30-day suspension to removal	Removal	
4. Offenses related to intoxicants			
Actions involving these offenses should be reviewed to insure the requirements of drug & alcohol abuse programs are met	FOR INSTRUCTIONAL USE ONLY		
a. Alcohol-related:			
(1) Unauthorized possession of alcoholic beverages while on Government premises or in duty status	Reprimand to 5-day suspension	5-day to 14-day suspension	14-day suspension to removal
(2) Unauthorized use of alcoholic beverages while on Government premises or in duty status	Reprimand to 14-day suspension	14-day to 30-day suspension	30-day suspension to removal
(3) Reporting to or being on duty while under the influence of alcohol	Reprimand to 30-day suspension	14-day suspension to removal	Removal
(4) Sale or transfer of an alcoholic beverage while on Government premises or in a duty status or while any person involved is in a duty status	Reprimand to removal	Removal	

Attachment to FPM Letter 751- (4)

Nature of offense	1st offense	2nd offense	3rd offense
b. Drug-related:			
(1) Unauthorized possession of a drug or controlled substance while on Government premises or in a duty status	5-day to 30-day suspension	14-day suspension to removal	Removal
(2) Unauthorized use of a drug or controlled substance while on Government premises or in a duty status	14-day to removal	30-day suspension to removal	Removal
(3) Reporting to or being on duty while under the influence of a drug or controlled substance	30-day suspension to removal	Removal	
5. Making false, malicious or unfounded statements against coworkers, supervisors, subordinates, or Government officials which tend to damage the reputation or undermine the authority of those concerned	Reprimand to removal	14-day suspension to removal	30-day suspension to removal
6. Abusive or offensive language, gestures or other conduct [Also see "Discourtesy", ¶7 below]	Reprimand to 10-day suspension	5-day suspension to removal	30-day suspension to removal
7. Discourtesy Penalty for 4th offense within one year may be 14-day suspension to removal	Oral admonishment to 1-day suspension	Reprimand to 5-day suspension	1-day to 10-day suspension
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8. Stealing, actual or attempted; unauthorized possession of Government property or property of others			
a. Where substantial value is not involved	Reprimand to removal	Reprimand to removal	5-day suspension to removal
b. Where substantial value is involved	14-day suspension to removal	Removal	
9. Using Government property or Government employees in duty status for other than official purposes Penalty depends on the value of the property or amount of employee time involved, the nature of the position held by the offending employee, and other factors. For misuse of Government vehicles, see ¶27 below.	Reprimand to removal	1-day suspension to removal	14-day suspension to removal

Attachment to FPM Letter 751- (5)

Nature of offense	1st offense	2nd offense	3rd offense
10. Misuse of official Government credential	Reprimand to removal	5-day suspension to removal	14-day suspension to removal
11. Deliberate misrepresentation, falsification, exaggeration, concealment or withholding of a material fact, or refusal to testify or cooperate in an official proceeding.	Reprimand to removal	1-day suspension to removal	5-day suspension to removal
12. Loss of or damage to Government property, records, or information [Also see ¶28] Penalty depends on value of property or extent of damage, and degree of fault attributable to employee	Reprimand to 14-day suspension	Reprimand to removal	14-day suspension to removal
FOR INSTRUCTIONAL USE ONLY			
13. Offenses relating to fighting Penalty depends on such factors as provocation, extent of any injuries, and whether actions were defensive or offensive in nature.			
a. Threatening or attempting to inflict bodily harm	Reprimand to 14-day suspension	14-day to removal	30-day suspension to removal
b. Hitting, pushing or other acts against another without causing injury	Reprimand to 30-day suspension	30-day to removal	Removal
c. Hitting, pushing or other acts against another causing injury	30-day suspension to removal	Removal	
14. Delay in carrying out or failure to carry out instruction in a reasonable time	Reprimand to removal	Reprimand to removal	5-day suspension to removal
15. Insubordinate defiance of authority, disregard of directive, refusal to comply with proper order	Reprimand to removal	5-day suspension to removal	Removal
16. Sleeping, loafing, or failure to attend to duties			
a. Where no danger to persons or property is involved	Oral admonishment to 1-day suspension	Reprimand to 5-day suspension	5-day suspension to removal
b. Where danger to persons or property is involved	Reprimand to removal	14-day suspension to removal	30-day suspension to removal

Attachment to FPM Letter 751- (6)

Nature of offense	1st offense	2nd offense	3rd offense
17. Negligent performance of duties			
a. Where wastage or other cost is insubstantial	Oral admonishment to reprimand	Reprimand to 5-day suspension	5-day to 30-day suspension
b. Where wastage or other cost is substantial	1-day to 5-day suspension	5-day suspension to removal	30-day suspension to removal
18. Offenses related to gambling			
a. Participating in an unauthorized gambling activity while on Government premises or in duty status	Oral admonishment to reprimand	1-day to 5-day suspension	5-day to 30-day suspension
b. Operating, assisting, or promoting an unauthorized gambling activity while on Government premises or in a duty status or while others involved are in a duty status	14-day suspension removal	Removal	
	FOR INSTRUCTIONAL USE ONLY		
19. Participating in a strike, work stoppage, slowdown, sickout, or other job action	Removal		
20. Indebtedness where agency operations or reputation are affected	Oral admonishment to reprimand	Reprimand to 5-day suspension	5-day suspension to removal

Offenses related to Supervisory/Managerial
Observance of Employee Rights

21. Sexual harassment	Reprimand to removal	5-day suspension to removal	30-day suspension to removal
22. Discrimination based on race, color, sex, religion, national origin, age, marital status, political affiliation, or handicap	Reprimand to removal	5-day suspension to removal	30-day suspension to removal
23. Interference with an employee's exercise of, or reprisal against an employee for exercising, a right to grieve, appeal or file a complaint through established procedures	Reprimand to removal	5-day suspension to removal	
24. Reprisal against an employee for providing information to an Office of Inspector General (or equivalent) or the Office of Special Counsel, or to an EEO investigator, or for testifying in an official proceeding	30-day suspension to removal	Removal	

Attachment to FPM Letter 751- (7)

Nature of offense	1st offense	2nd offense	3rd offense
25. Reprisal against an employee for exercising a right provided under 5 U.S.C. Chap. 71 (governing Federal labor-management relations)	Reprimand to removal	5-day suspension to removal	30-day suspension to removal

Offenses proscribed in statute

26. Finding by MSPB of refusal to comply with MSPB order or of violation of statute causing issuance of Special Counsel complaint [5 U.S.C. §§1206(g)(1) and 1207(b)]	Reprimand to removal
27. Directing, expecting or rendering services not covered by appropriations [5 U.S.C. 3103]	Removal
28. Prohibited political activity a. Violation of prohibition against political contributions [5 U.S.C. 7323] b. Violation of prohibition against campaigning or influencing elections [5 U.S.C. §§7324 and 7325]	Removal 30-day suspension to removal
29. Failure to deposit into the Treasury money accruing from lapsed salaries or from unused appropriations for salaries [5 U.S.C. 5501]	Removal <u>FOR</u> <u>INSTRUCTIONAL</u> <u>USE</u> <u>ONLY</u>
30. Soliciting contributions for a gift for a superior; making a donation as a gift to a superior; accepting a gift from an employee receiving less pay [5 U.S.C. 7351]	Removal
31. Action against national security [5 U.S.C. 7532]	Suspension or removal
32. Willfully using or authorizing the use of a government passenger motor vehicle or aircraft for other than official purposes [31 U.S.C. 638a(c)(2)]	1-month suspension to removal
33. Mutilating or destroying a public record [18 U.S.C. 2071]	Removal